

**TREASURY-GENERAL**

**OFFICE OF THE STATE TREASURER**

**Offset of State Lottery Prizes to Satisfy Defaulted Federal and State Student Loans**

**Proposed Readoption with Amendments: N.J.A.C. 17:43**

Authorized By: John E. McCormac, State Treasurer.

Authority: P.L. 1997, c.306.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2003- .

Submit written comments by September 29, 2003 to:

Carmen Armenti, Assistant State Treasurer

Office of the State Treasurer

State House

PO Box 002

Trenton, NJ 08625-0002

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 17:43 expires on May 18, 2003. The expiration date of these rules is extended to November 14, 2003 pursuant to N.J.S.A. 52:14B-5.1c by filing this proposed readoption with amendments with the Office of Administrative Law prior to the expiration date. The Office of the State Treasurer, the Division of State Lottery and the Higher Education Student Assistance Authority (HESAA) have reviewed the rules proposed for readoption and determined

them to be necessary, reasonable and proper for the efficient administration of the procedures therein to offset State lottery prizes to satisfy defaulted Federal and State student loans for which they were originally promulgated, as required by the Executive Order. To ensure the continued efficient administration of this State lottery offset, the Office of the State Treasurer is proposing the readoption of these rules to satisfy defaulted Federal and State student loans.

The rules proposed for readoption with amendments provide for a match of lists of winners of lottery prizes in excess of \$1,000 with lists of individuals who are in default of a student loan. The match is to be based on lists maintained by the Division of State Lottery in the Department of the Treasury and HESAA. No lottery prize in excess of \$1,000 will be disbursed until a comparison has been made and a resolution of any debt is satisfied.

If a match is found, HESAA is required to notify the lottery winner that payment of the prize is being withheld and that the individual may request a hearing on the debt. If the individual does not request a hearing, the lottery prize will be applied to the debt prior to the disbursement of the remainder of the lottery prize. If the individual requests a hearing, the resolution of the hearing process will determine whether or not the lottery prize will be applied to the debt. If the defaulted loan is subject to a judgment, the lottery prize will be applied to satisfy the judgment prior to the disbursement of the remainder of the lottery prize. If the debtor appeals the judgment, the resolution of the appeal will determine whether or not the lottery prize will be applied to the debt.

The amendments to these rules being proposed for readoption, for the most part, incorporate the consolidation of financial aid administrative and governing entities,

including the Office of Student Assistance (OSA), into a single State Authority, the Higher Education Student Assistance Authority (HESAA) pursuant to N.J.S.A.

18A:71A-1 et seq. Therefore, all references to OSA are amended in accordance with the statute. N.J.A.C. 17:43-1.3, 1.4 and 1.5 are also amended to reflect the abolishment of the Office of Telecommunications and Information Systems (OTIS) and the continuation of all of its functions, powers and duties in the Office of Information Technology (OIT) established by and pursuant to Executive Order No. 87(1998). Therefore, all references to OTIS are amended in accordance with the Executive Order. All other amendments to N.J.A.C. 17:43-1.3, 1.4, 1.5, 1.6, 1.8, 1.9 and 1.10 provide further clarification in each of these sections in identifying the references therein to Lottery and Treasury and in the context of information already promulgated within each rule.

As the Office of the State Treasurer has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The rules proposed for readoption with amendments will enhance the ability of the State to collect defaulted Federal and State student loans. Defaulted student loans negatively impact access to low cost student loans since the Federal government has to increase Federal spending to cover the costs of defaulted student loans, and since the State student loan program will have less to lend to students if it has to use bond proceeds to cover the costs of defaults. Therefore, providing the State another collection tool can help safeguard the student loan funds that facilitate access to higher education.

### **Economic Impact**

The rules proposed for readoption with amendments will have a positive economic impact on the loan funds which HESAA will have available for students who wish to borrow since repayments of defaulted loans will continue to be made through the State lottery offset. In accordance with P.L. 1997, c.306, the costs of implementing the Act and these rules will be borne by HESAA. However, the administrative cost of the program under HESAA is estimated to be nominal due to HESAA's participation in the administration of the Set-off of Individual Liability (SOIL) Program, P.L. 1981, c.239, which allows the State to offset any refund of taxes or the homestead rebate of a taxpayer who is indebted to any agency or institution of State government or for child support.

### **Federal Standards Statement**

N.J.A.C. 17:43-1.4 contains a stipulation that for lottery prizes of more than \$5,000, Federal income tax withholding will take precedence over any other setoffs, deductions or set asides under these rules. This precedence for Federal income tax withholding is required by section 1942 of the Energy Policy Act, which amends Internal Revenue Code Sec. 3402(q); Reg. Secs. 31.3402(q)-1, 1.6011-3. There are no other Federal laws or regulations that impact these rules proposed for readoption with amendments. N.J.A.C. 17:43 is based on State statute which establishes authority for this chapter. Therefore, a Federal exceedance analysis is not required.

### **Jobs Impact**

The rules proposed for readoption with amendments will not result in either the creation of new jobs or the loss of existing jobs.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will not have any impact on the agriculture industry.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments do not impose reporting, recordkeeping, or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments govern only the administrative operations of State agencies relative to individuals who have won lottery prizes in excess of \$1,000 and who have defaulted on student loans.

### **Smart Growth Impact**

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:43.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

17:43-1.1 [OSA's] **HESAA's** responsibility

The [Office of] **Higher Education** Student Assistance [(OSA)] **Authority** (**HESAA**) shall maintain a list of individuals covered by P.L. 1997, c.306. The list shall include the individual's name and social security number, plus the amount of the Federally guaranteed loan balance in default or State student loan balance in default. The

list shall be updated at least monthly to show new individuals or obligations and to show payment or satisfaction of amounts outstanding.

17:43-1.3 [OTIS'] **OIT's** responsibility

On a weekly basis, the Office of [Telecommunications and] Information [Systems (OTIS)] **Technology (OIT)** shall perform a computer match of the data on the two lists **described in N.J.A.C. 17:43 – 1.1 and 1.2** to ascertain the existence of a social security number match and shall notify both [OSA] **the Higher Education Student Assistance Authority (HESAA)** and **the Division of State Lottery (Lottery)** of the existence of any such match or of the fact that no matches were found from the given comparison. If matches are found, [OTIS] **OIT** shall transmit a list to each agency including the individual's name, address, social security number, lottery prize and student loan balance in default. No lottery prize in excess of \$1,000 shall be disbursed by the Department of the Treasury [(Treasury)] until results of a match involving that prize payment have been determined. In case of annuity prizes where the first installment has not been paid, the match will be conducted on an expedited basis, directly between [OSA] **HESAA** and Lottery. If the first installment exceeds the lien, a net check can be given to the winner immediately[, **along** with [the procedures elaborated under these rules to apply to] **information concerning** the amount withheld from immediate distribution **and the procedures which the debtor must follow to request a hearing by HESAA.**

17:43-1.4 Prize disbursement restriction

Upon receipt of notice from [OTIS] **the Office of Information Technology** that a social security number match has been made, neither **the Division of State** Lottery nor

**the Department of the** Treasury shall disburse the lottery prize (except a first annuity installment as described in N.J.A.C. 17:43-1.3) until notified that the hearing procedures set forth in this subchapter have been completed or that no hearing has been timely requested. Lottery prizes of **more than** \$5,000 [or more] shall first be subjected to Federal income tax withholding before any other setoffs, deductions or set asides under these rules. Lottery prizes in excess of \$1,000 shall also be subjected to offset described in N.J.A.C. 17:42 before any setoffs, deductions or set asides under these rules.

#### 17:43-1.5 Notice of prize withholding

Within 14 days of notification by [OTIS] **the Office of Information Technology** that a social security number match has been found to exist, [OSA] **the Higher Education Student Assistance Authority (HESAA)** shall cause written notice to be sent to the subject of the match by first class mail. Such notice shall inform the individual that the match has been found to exist, that payment of the lottery prize is being withheld, that he or she has the right to make a request[,] within 14 days of the date of the notice[,] for a hearing on the debt and the proposed setoff<sub>2</sub>, and that[,] if no such request is timely received, **the Department of the** Treasury will transmit the withheld money, up to the amount owed, to [OSA] **HESAA**.

#### 17:43-1.6 Treasury action following notice of prize withholding

(a) No later than 20 days from the date of the notice to the debtor, [OSA] **the Higher Education Student Assistance Authority (HESAA)** shall notify **the Department of the** Treasury (**Treasury**) and **the Division of State** Lottery of any request by the debtor for a hearing, of the failure of the debtor to make such request or of the satisfaction of the debt. Such information shall allow Treasury to:

1. Maintain the account on a hold status if a hearing has been requested;
2. Transmit the debt to [OSA] **HESAA**, where the debtor has not made a timely request for a hearing or where a hearing request is made but subsequently withdrawn; or
3. Release the prize check to the winner if the debt has been satisfied.

(b) Treasury shall extend the hold status of an affected check [until a final decision by OSA, in order to accommodate the hearing process, where Treasury has been notified] **following notification from HESAA** that a hearing has been requested pursuant to N.J.A.C. 17:43-1.7 **and until a final decision has been rendered by HESAA (including any appeal which may be taken by the debtor)**. [Following the hearing, N.J.A.C. 17:43-1.9 shall apply.] If the request for the hearing is withdrawn, the provisions of (a)2 and 3 above shall apply.

#### 17:43-1.7 Right to hearing

(a) Any person whose lottery prize has been withheld pursuant to P.L. 1997, c.306 may request a hearing by serving a written request on [OSA] **the Higher Education Student Assistance Authority (HESAA)** within 14 days of the date of the notice of match described in N.J.A.C. 17:43-1.5. However, if a person is subject to a judgment by [OSA] **HESAA** on account of a defaulted student loan, N.J.A.C. 17:43-1.8, and not this section, shall apply.

(b) When a debtor makes a timely request for a hearing in a case where [OSA] **HESAA** is seeking to collect on a defaulted student loan(s), [OSA] **HESAA** shall conduct an administrative review on the existence or amount of the debt.

(c) If the matter cannot be resolved through administrative review, the matter



shall be filed forthwith with the Clerk of the Office of Administrative Law for a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq. The Office of Administrative Law shall recommend a decision to [OSA] **HESAA** within 45 days of the closing of the record on the case, in accordance with N.J.S.A. 52:14B-10.

(d) If a debtor disagrees with the final agency decision made by [OSA] **HESAA** following a contested case hearing, and wishes to appeal that decision, the debtor may appeal to the Appellate Division of the Superior Court of New Jersey within the period established by New Jersey Court Rule 2:4.

#### 17:43-1.8 Defaulted loan subject to agency judgment

If there is a judgment against the debtor in a case where [OSA] **the Higher Education Student Assistance Authority (HESAA)** is seeking to collect on a defaulted student loan(s), the debtor wishing to contest the application of lottery prize winnings toward student loan debt must seek relief in the court where judgment was entered. If there is an appeal of that judgment, [OSA] **HESAA** shall notify **the Division of State Lottery** and **the Department of the Treasury** within three days of the date of service of such appeal to maintain the account on hold status until the matter is resolved.

#### 17:43-1.9 Transmission of prize offset to [OSA] **HESAA**

(a) Upon either final determination on the existence or amount of the debt, or upon the debtor's default for failure to make a timely request for review of the asserted setoff, or upon partial payment of the outstanding debt, [OSA] **the Higher Education Student Assistance Authority (HESAA)** shall forthwith notify **the Department of the Treasury (Treasury)** and **the Division of State Lottery (Lottery)**, following which the

amounts withheld from distribution, up to the amount owed, shall be transmitted to [OSA] **HESAA**.

(b) Where judicial review is sought from the final agency decision, [OSA] **HESAA** shall advise Treasury and Lottery of such appeal within three days of the date of service of the request for judicial review. Upon resolution of judicial review (including any appeal which may be taken) like notice shall be provided by [OSA] **HESAA** to Treasury and Lottery.

#### 17:43-1.10 Notice and disbursement of prize after setoff

Upon the finalization of setoff through administrative or judicial action, [OSA] **the Higher Education Student Assistance Authority** shall notify the debtor in writing of the action and of any outstanding balance remaining due after the setoff. If there is an outstanding prize balance remaining after the setoff, it shall be disbursed by **the Department of the** Treasury to the debtor.

#### 17:43-1.11 Confidentiality

Apart from notice to affected individuals and to [OSA] **the Higher Education Student Assistance Authority** for purposes of administrative review, personally identifiable information compiled under this chapter regarding any person shall be confidential and shall not be disseminated or used for any purpose other than as set forth in P.L. 1997, c.306 and this chapter.

